

REMARKS

A. Status of the Application

I. Disposition of Claims

- (i) Claims 1-5 are pending in the application.
- (ii) Claims 1-5 are rejected.

II. Applicant's Action

- (i) Applicant has amended Claims 1-5.
- (ii) Applicant responds to the 35 U.S.C. § 102(b) rejection.

B. References and Abbreviations

Cited references are given on the right and their abbreviations on the left in the list below:

the 049 application	U.S. Pat. App. Serial No. 10/566,537
Advisory Action	August 10, 2010 Advisory Action
Office Action	February 26, 2010 Final Office Action
French	U.S. Patent No.6,105,802 to French, <i>et al.</i>
Laciamera	U.S. Patent No. 6,279,779 to Laciamera, <i>et al.</i>

C. Claim Amendments

Applicant, in response to the Advisory Action, has amended Claims 1 and 3. Particularly, the following features have now been included in these claims. Also, Claims 2, 4, and 5 have also been amended but only for clarity.

No.	Feature	Support
1.	Cap provides aseptic seal	Page 2, Paragraph [0026]
2.	Push-on mechanism	Page 3, Paragraph [0036]
3.	Pull-off mechanism	Page 3, Paragraph [0038]
4.	Screw threads at the top of the spout provided for attachment to a connector pipe	Page 3, Paragraph [0031]

D. Drawings Related Issue—Pre-Cap and Full-Cap Positions

According to the Examiner, the pre-cap position and the full-cap position of the TEF assembly are not shown in the drawings. We respectfully disagree. The pre-cap position is shown in Figs. 2A and 2B. The full-cap position is shown in Figs. 4A and 4B.

E. Drawings Related Issue—Reference Character "32"

Reference character 32 is used to show "lower internal ledge" (See Page 3, Paragraph [0029]) in Figs. 1B, 1C, and 3, but not in Fig. 2B. A Replacement Sheet Fig 2B, with the corrected drawing is attached.

F. Anticipation Rejection—the French Reference—Claims 1-5

In the Office Action, the Examiner alleges that French anticipates Claims 1-5 of the 049 application under 35 U.S.C. § 102(b). We respectfully disagree with the Examiner's conclusion because the tamper-evident fitment assembly (TEF assembly) of the 049 patent shows many distinguishing features over the closure/container system disclosed in French (in light of the amendments in the present set of claims). The differences are discussed below.

In the 049 application, the cap can be affixed on the spout without the cap being in a full-cap position, but still providing an aseptic seal. This refers to the pre-cap position (or the pre-fill position; see for example, Fig. 2B). In this position, the annular locking ring is below the cap's tamper indicating band. Clearly, the shoulder or the tamper-evident ring lock has not engaged the locking ring of the spout. Yet, the cap provides an aseptic seal. This feature is very useful to avoid contamination or spilling of the spout before filling the container or bag to which the TEF assembly will attach.

On the other hand, the French system does not have a structure that can afford both a pre-cap and a full-cap position for the closure on the container. The pre-cap position related feature is described neither in the specification nor in the drawings. Even if one argued that such a position was possible, that is, the skirt member (36) being above the intermediate outwardly extending ridge or skirt portion (20), the cap cork (the cylindrically-shaped internal centering element (46)) would end up being in a position of non-attachment (no seal) to the container because it would be positioned in such a way that a gap will be created between the locking lip (18) and the upper end wall (32).

In the 049 TEF assembly, the cap is attached by a push-on mechanism and removed by a pull-off mechanism. On the other hand, in the closure/container system of French, while the closure can be pushed onto the container, it is removed only by twisting the cap away via a screw action. For example, according to French, "...the closure is provided with a tamper-evident skirt readily separated from the closure by twisting the closure in an opening operation with respect to the container." In fact, in the 049 TEF system, the external screw threads (40) at the top of the spout are generally provided for attachment to a connector pipe (for example, for emptying the container), and not for attaching the cap. Similarly, the TEF assembly cap does not have internal threads for closing or opening the cap by twisting and turning in a screw action, but instead has ridges that may be used for locking. Threads, a person skilled in the art knows, are continuous, as opposed to annular rings.. In contrast, (see Fig. 2), the French system clearly shows threads both on the inside of the closure and the outside container specifically for engaging the closure on to the container.

The 049 TEF assembly is different in one more way in one of its embodiments. Its spout comprises circular tab protrusions (39), that "cooperates with locking ring (41) to engage and retain tamper-evident ring lock (38)" when the cap is peeled away from the spout subsequent to a full-cap, post-fill position.¹ When the cap is pulled off (peeled away) from the spout, the tamper indicating frangible elements break. But because the frangible elements are sufficiently plastic,

¹ See the 049 Patent Application Publication No. 2007/0181578A1, Page 3, Paragraph [0031].

they may have a tendency to elongate, avoiding a tear. As a result, even when the cap is completely removed, the band may remain attached to cap instead of being retained on the spout. In such situation, the user would not know whether the cap has been tampered with, or not attached on to the spout in first place. But on the other hand, if the band were retained on the spout, it is a clear indication that the cap was tampered or removed. In contrast, no such tabs exist in the French system.

Therefore, French does not anticipate the 049 invention under 35 U.S.C. § 102 (b).

G. Anticipation Rejection—the Laciamera Reference—Claims 1-5

In the Office Action, the Examiner further alleges that Laciamera also anticipates Claims 1-5 of the 049 application under 35 U.S.C. § 102(b). We respectfully disagree with the Examiner's conclusion because the tamper-evident fitment assembly (TEF assembly) of the 049 patent shows many distinguishing features over the cap/frame/cutting member (CFC) assembly disclosed in Laciamera. The differences are discussed below.

In the 049 application, the cap can be affixed on the spout without the cap being in a full-cap position, but still providing an aseptic seal. This refers to the pre-cap position (or the pre-fill position; see for example, Fig. 2B). In this position, the annular locking ring is below the cap's tamper indicating band. Clearly, the shoulder or the tamper-evident ring lock has not engaged the locking ring of the spout. Yet, the cap provides an aseptic seal. This feature is very useful to avoid contamination or spoiling of the spout before filling the container or bag to which the TEF assembly will attach.

On the other hand, the Laciamera system does not have a structure that can afford both a pre-cap and a full-cap position for the closure on the container. The pre-cap position related feature is described neither in the specification nor in the drawings. For example, Laciamera states that "[c]ap 17 is fitted initially to frame 15 in a sealed position, wherein the cap is screwed completely onto collar 20, with the end edge 38 of the cap and tamperproof ring 37 still connected to each other and resting on opposite sides of rib 28 of collar 20."² (Emphasis added).

In the 049 TEF assembly, the cap is attached by a push-on mechanism and removed by a pull-off mechanism. On the other hand, in Laciamera's CFC assembly, the cap is affixed onto the frame and removed off it by screw and unscrewing action. Laciamera does not suggest using a push-on/pull-off mechanism for attaching the cap to the frame. Clearly, the cap has internal threads and the frame has corresponding external threads, seen clearly in Fig. 4 of Laciamera.

The 049 TEF assembly is different in one more way in one of its embodiments. Its spout comprises circular tab protrusions (39), that "cooperates with locking ring (41) to engage and retain tamper-evident ring lock (38)" when the cap is peeled away from the spout subsequent to a full-cap, post-fill position.³ When the cap is pulled off (peeled away) from the spout, the tamper indicating frangible elements break. But because the frangible elements are sufficiently plastic, they may have a tendency to elongate, avoiding a tear. As a result, even when the cap is completely removed, the band may remain attached to cap instead of being retained with the spout. In such situation, the user would not know whether the cap has been tampered with, or not attached on to the spout in first place. But on the other hand, if the band were retained on the

² See Laciamera generally.

³ See 049 Patent Application Publication No. 2007/0181578A1, Page 3, Paragraph [0031].

spout, it is a clear indication that the cap was tampered or removed. In contrast, no such tabs exist in the Laciacara system.

Therefore, Laciacara does not anticipate the 049 invention under 35 U.S.C. § 102 (b).

CONCLUSION

In view of the above remarks, we have properly traversed the 35 U.S.C. § 102(b) rejections and other objections, and have completely responded to the February 26, 2010 Final Office Action and the August 10, 2010 Advisory Action.

The application is therefore allowable. We respectfully solicit that the PTO withdraw the rejections and allow the claims.

A petition to extend the filing of this response by three months under 37 C.F.R. § 1.136(a) accompany this response.

Please contact the undersigned (Applicant's attorney) for questions and charge any unaccounted for fees to Deposit Account No. 501447 (Potter Anderson & Corroon, LLP).

RESPECTFULLY SUBMITTED,

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